IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1223 of 1984
With
FIRST APPEAL No. 75 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MANGALBHAI AMTHARAM PATEL & 1 - Appellant(s)
Versus
HARJIBHAI JIVRAJBHAI PATEL & 5 - Defendant(s)

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Appearance :
MR YN RAVANI for Appellant(s) : 1 - 2.
None for Defendant(s) : 1,4 - 6.
MR RAJNI H MEHTA for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellants have challenged the judgement and award dated 11.11.83 passed by the Motor Accident Claims Tribunal (Main) Ahmedabad in Motor Accident Claims Application No. 673 of 1981 whereby the Tribunal has awarded compensation of Rs. 41,000/- payable to the appellants by opponent no.3.

2. The appellants had filed claim petition claiming Rs.

1,00,000/- by way of compensation for the vehicular accident which occurred while the deceased son of the appellants alongwith one shri Somabhai was travelling in a matador van via Sarkhej Road. The van stopped behind a rickshaw as the rickshaw driver was collecting fare from the passengers and at that time, a truck coming from the opposite side dashed with the matador van. The son of the appellants sustained injuries and later on succumbed to the said injuries. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel appearing for the appellants has contended that the Tribunal has not taken into consideration the fact that the deceased son of the appellants was 18 years old and therefore atleast multiplier of 20 ought to have been used. He has further contended that the Tribunal has overall not applied the relevant principles applicable for awarding compensation as far as the appellants' case is concerned.

4. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the material placed on record. The Tribunal in para 10 has concluded that the deceased died due to the injuries received by him in the accident which happened due to rash and negligent

driving of the truck driver and for the same the Tribunal has relied on the pachnama at Ex. 54 and the evidence of Shri Somabhai at Ex. 53. Even otherwise, as a result of perusal of records, I am of the view that since during the accident, the matador van was stationary and it was the truck which was in motion and was coming from the opposite direction. In that view of the matter, the contributory negligence in the present instance can be attributed to the truck driver, rash and negligent driving of whose dashed the stationary van and thereby killed the son of the appellants.

4.1 Moreover, the Tribunal has not followed the multiplier method as the same has to be done in case the appellants are dependent on the deceased which in the present case is not the situation. The Tribunal after considering the age of the deceased, age of the appellants and the amount spent by the appellants till the date of accident for upbringing their son has awarded Rs. 41,000/- towards the compensation which in my opinion is just and proper and therefore no interference is called for in the matter.

5. In the premises aforesaid, appeal is dismissed. No order as to costs.

6. In view of the order in FA 1223 of 1984, FA 75 of 1985 shall not survive. Hence, First Appeal No. 75 of 1985 stands disposed of accordingly.

(K.S. JHAVERI, J.)

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